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10/678,391	10/03/2003	Kiminori Sugauchi	028351-000100US	3516

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EXAMINER	
WHIPPLE, BRIAN P	

ART UNIT	PAPER NUMBER
2452	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/678,391	SUGAUCHI ET AL.
	Examiner	Art Unit
	BRIAN P. WHIPPLE	2452

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2010*.
2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-9* is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1 and 3-9* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a)☒ All b)☐ Some * c)☐ None of:
1.☒ Certified copies of the priority documents have been received.
2.☐ Certified copies of the priority documents have been received in Application No. _____.
3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1 and 3-9 are pending in this application and presented for examination.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/16/10 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 1 and 3-9 have been considered, but are moot in view of the new ground(s) of rejection. Namely, the amended subject matter "the user request does not include identification of a measurement device" and "absent any information from the user that identifies the measurement device selected" is rejected under 35 U.S.C. 112, first paragraph as new matter unsupported by the specification. For the purposes of expedited prosecution, the limitations are also rejected with the newly cited prior art of Angeles, U.S. Publication No. 2002/0128925 A1.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1 and 3-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The applicant has amended claim 1 to state the user request "does not include identification of a measurement device" and selecting the measurement device is done "absent any information from the user that identifies the measurement device selected." However, the examiner believes this is not supported by the specification. A negative limitation must be expressly indicated in the specification as filed. In this case, the examiner does not believe the specification indicates clearly that the user request excludes an identification of a measurement device or that the selection of a measurement device is done "absent any information from the user that identifies the measurement device selected."

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1, 3-4, and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, U.S. Publication No. 2003/0204579 A1, in view of Wolf et al. (Wolf), U.S. Patent No. 6,278,694 B1, further in view of Garg et al. (Garg), U.S. Patent No. 6,327,677 B1, further in view of what was well known in the art, and further in view of Angeles, U.S. Publication No. 2002/0128925 A1.

7. As to claim 1, Lutz discloses a network measurement configuration apparatus connected to a network having a plurality of measurement devices arranged therein, which measures traffic data flowing in a network segment and configures the network based on a measurement rule, comprising,

a receiving means which receives a user request including a measurement type ([0074], ln. 19-22),

selecting a measurement device responsible for a measurement, ([0074], ln. 30-32).

Lutz does not disclose the request including path information between two terminals, wherein the user request does not include identification of a measurement device,

a measurement device information storing means which stores information indicating a process for measuring traffic data that can be executed by the corresponding plurality of measurement devices, and stores information indicating a network segment in which a measurement of traffic data can be executed by the corresponding measurement device in each of said plurality of measurement devices,

a network configuration storing means which stores information indicating connection relationships of network segments configuring the network, and

a measurement device selecting means for specifying a network segment included in a path based on the path information included in the user request with reference to the network configuration storing means, and selecting a measurement device from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected, wherein the measurement device selected is capable of measuring the specified network segment, is capable of making measurements relating to the measurement type included in the user request, and has capacity to make said measurements.

However, Wolf discloses a plurality of measurement devices (Col. 2, ln. 39-48);

selecting a measurement device from the plurality of measurement devices (Col. 2, ln. 39-48).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz in the aforementioned manner in order to select the best network monitor for a specific task from a plurality of available network monitors (Wolf: Col. 2, ln. 39-48).

Lutz and Wolf do not disclose the request including path information between two terminals, wherein the user request does not include identification of a measurement device,

a measurement device information storing means which stores information indicating a process for measuring traffic data that can be executed by the corresponding measurement device, and stores information indicating a network segment in which a measurement of traffic data can be executed by the corresponding measurement device in each of said plurality of measurement devices,

a network configuration storing means which stores information indicating connection relationships of network segments configuring the network, and

a measurement device selecting means for specifying a network segment included in a path based on the path information included in the user request with reference to the network configuration storing means, and selecting a measurement device from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected, wherein the measurement device selected is capable of measuring the specified network segment, is capable of making measurements relating to the measurement type included in the user request, and has capacity to make said measurements.

However, Garg discloses the request including path information between two terminals (Col. 5, ln. 14-23; Col. 6, ln. 30-36; Col. 13, ln. 19-22 and 30-32; the data collection module requests information, such as lost packets, on one or more data communications links on any number of network devices; it may be interpreted that if information is being collected on a link between a plurality of devices that path information must be known, wherein the designation of two devices qualifies as path information as shown on page 8, ln. 10-11 of the instant disclosure),

a measurement device information storing means which stores information indicating a process for measuring traffic data that can be executed by the corresponding measurement device, and stores information indicating a network segment in which a measurement of traffic data can be executed by the corresponding measurement device in each of said plurality of measurement devices (Col. 5, ln. 14-23; Col. 6, ln. 30-36; Col. 13, ln. 19-22 and 30-32; Garg discloses the segment as this must be stored in order to measure performance between two devices in the network environment), a network configuration storing means which stores information indicating connection relationships of network segments configuring the network (Col. 6, ln. 1-23), and

a measurement device selecting means for specifying a network segment included in a path based on the path information included in the user request with reference to the network configuration storing means, and selecting a measurement device from the plurality of measurement devices, wherein the measurement device selected is capable of measuring the specified network segment, is capable of making measurements relating to the measurement type included in the user request, and has capacity to make said measurements (Col. 5, ln. 14-23; Col. 6, ln. 1-23 and 30-36; Col. 13, ln. 19-22 and 30-32; Garg discloses path information and the measurable network range as discussed above; Garg discloses a measurable point obtained by path information by tools that are available to trace a path between two devices or systems in a network environment, the network analyzer must have a measurable network range between the two devices that includes a measurable point between the two devices, the designation of the two devices being path information as supported by page 8, ln. 10-11 of the instant disclosure; reference is made to the storing means as laid out in Col. 6, ln. 1-23, the storage module comprises measure device information storing means and a network configuration storing means as laid out for each limitation above; various measurement types are possible such as work utilization, response time, and number of errors as discussed in Col. 5, ln. 14-22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz and Wolf by including path information in the request and by modifying Lutz in the afore-mentioned manners, as discussed above, as taught by Garg in order to collect information regarding the operation or performance of a communications link (Garg: Col. 5, ln. 18-21) and use and store analysis rules related to operation and performance (Garg: Col. 6, ln. 1-11; Col. 12, ln. 9-11) in order to identify problems or potential problems in a network (Garg: Col. 11, ln. 62-66).

It may be interpreted that the request of Garg is not a user request, as it may be automatic system functions. However, an administrator would have to initially configure the system in a desired manner. This may be viewed as a user request. Additionally, Garg actually goes above and beyond a user request by enabling automatic functions which then may inform a user for the appropriate response; thus saving the user the need to manually request possibly relevant information. However, reasons for manually including the request, such as a request for path information, in a user request would have been obvious, for reasons such as allowing a user to request information on a relevant link. For example, an administrator may wish to request information on a network path that has previously caused problems or in some other way operated undesirably.

Official Notice (see MPEP 2144.03) is taken that manually including the information, such as path information, in a user request was well known in the art at the time of the invention.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz, Wolf, and Garg by including information, such as the path information, in a user request as was well known in the art in order to gain the afore-mentioned benefits (i.e., requesting information on a previously problematic network path).

Lutz, Wolf, and Garg are silent on the user request does not include identification of a measurement device,

selecting a measurement device from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected.

However, Angeles discloses the user request does not include identification of a measurement device (Abstract, “intercepts and logs secure and non-secure HTTP request”),

selecting a measurement device from the plurality of measurement devices based on the specified network segment absent any information from the user that identifies the measurement device selected ([0095]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz, Wolf, and Garg in the aforementioned manner as taught by Angeles in order to select an appropriate monitoring device when an issue such as failure prevents selection of another monitoring device.

8. As to claim 3, Lutz, Wolf, Garg, and Angeles further disclose the network measurement configuration apparatus according to claim 1, further comprising,

a measurement type information storage means which stores information indicating the measurement type and information indicating at least one process which is needed to achieve a measurement corresponding to the measurement type in associated manner (Garg: Col. 5, ln. 13-23; Col. 6, ln. 1-11 and 46-51), wherein,

said measurement device selecting means determines as said measurement device which is capable of executing the process, a measurement device which is capable of executing the process associated with the measurement type included in the user request (Lutz: [0074], ln. 19-22 and 30-32).

9. As to claim 4, Lutz, Wolf, Garg, and Angeles disclose the network measurement configuration apparatus according to claim 3, wherein,

said measurement type information storing means further stores the measurement type and the number of the measurement devices in associated manner (Lutz: Figure 8, items V7 and V8; [0074], ln. 30-32; it may be interpreted that since the analyzer stores information on each of the applets and their specific types for the purposes of selection, as a result of storing this information for each applet, the number of each type has also been computed), and

said measurement device selecting means selects the measurement device responsible for measurement based on the user request, the number corresponding to said number of the measurement devices associated with the measurement type included in the user request (Lutz: [0074], ln. 19-22 and 30-32).

10. As to claim 6, Lutz, Wolf, Garg, and Angeles disclose the network measurement configuration apparatus according to claim 1, further comprising;

a characteristic calculating device information output means which transmits information to identify a method for calculating a value corresponding to the measurement type, to said characteristic calculating device which calculates a value corresponding to the measurement type included in the user request, based on the traffic data measured by the measurement device (Lutz: [0075]).

11. As to claim 7, Lutz, Wolf, Garg, and Angeles further disclose the network measurement configuration apparatus according to claim 6, wherein,

a measurement rule is set in the measurement device thus selected (Garg: Col. 11, ln. 66-67; Col. 12, ln. 1-2; Col. 13, ln. 19-20 and 38-40),

after the information for identifying the method for calculating a value corresponding to the measurement type is transmitted to said characteristic calculating device (Garg: Col. 5, ln. 13-23; Col. 6, ln. 1-11; Col. 11, ln. 66-67; Col. 12, ln. 1-4 and 9-12; the analysis module compares current performance to past performance through the use of analysis rules; it may be interpreted that past performance had to be measured prior to the creation of an analysis rule in order for past performance to be compared to current performance; creating an analysis rule after measuring past performance is setting a measurement rule after identifying a method for calculating a measurement type).

12. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, Wolf, Garg, and Angeles as applied to claim 2 above, further in view of Merugu et al. (Merugu), U.S. Patent No. 7,061,874 B2.

13. As to claim 5, Lutz, Wolf, Garg, and Angeles disclose the invention substantially as in parent claim 1, including said measurement device information storing means further stores

information to determine whether or not the measurement device is available for setting the measurement rule (Lutz: [0074], ln. 30-32; it may be interpreted that if the server selects an analyzer and the analyzer selects an applet that is "appropriate" based on stored data that the availability status of the analyzer and applet must be stored for this determination), and

said measurement device selecting means does not select as the measurement device responsible for the measurement, the measurement device which is not in a status available for setting the measurement rule (Lutz: [0074], ln. 30-32; it may be interpreted that the server selecting an appropriate analyzer and the analyzer selecting an appropriate applet would eliminate non-available analyzers and applets from selection).

Lutz, Wolf, Garg, and Angeles are silent on in each of a plurality, storing information indicating a maximum number of rules acceptable and information indicating the number of rules which are currently set.

However, Merugu discloses in each of a plurality, storing information indicating a maximum number of rules acceptable and information indicating the number of rules which are currently set (Col. 6, ln. 2-6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz, Wolf, Garg, and Angeles by in each of a plurality, storing information indicating a maximum number of rules acceptable and information indicating the number of rules which are currently set as taught by Merugu in order to improve system performance (Merugu: Col. 6, ln. 2-6).

14. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, Wolf, Garg, and Angeles as applied to claim 1 above, further in view of Sato, U.S. Publication No. 2003/0033395 A1.

15. As to claim 8, Lutz, Wolf, Garg, and Angeles disclose the network measurement configuration apparatus according to claim 1, further comprising,

other measurement device which is capable of measuring network segments included in a path indicated by path information included in a user request and is capable of executing a process which measures traffic data relating to a measuring type included in the user request, or other measurement device which is capable of measuring network segments adjacent to the network segments included in the path indicated by the path information included in the user request and is capable of executing a process which measures traffic data relating to a measuring type included in the user request (Garg: Col. 5, ln. 13-23; Col. 6, ln. 31-42; Col. 13, ln. 19-22 and 30-32).

Lutz, Wolf, Garg, and Angeles do not disclose a problem determining means which determines whether or not a problem occurs in the device, wherein, when the problem occurs in the device being selected, said device selecting means selects as the device responsible for the operation, instead of the device being selected, another device.

However, Sato does disclose a problem determining means which determines whether or not a problem occurs in the device ([0013], ln. 17-19; [0044]), wherein,

when the problem occurs in the device being selected, said device selecting means selects as the device responsible for the operation, instead of the device being selected, another device ([0013], [0044]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz, Wolf, Garg, and Angeles by determining if a problem occurs in the device and selecting an alternate device as taught by Sato in order to allow another device to take over the functions being performed by the original device (Sato, [0013], ln. 17-19).

16. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lutz, Wolf, Garg, and Angeles as applied to claims 1 and 6 above, further in view of Fijolek et al. (Fijolek), U.S. Patent No. 6,223,222 B1.

17. As to claim 9, Lutz, Wolf, Garg, and Angeles disclose a network measurement configuration apparatus according to claim 6, wherein,

evaluating based on the measurement type calculated by said characteristic calculating device (Lutz: [0075]).

Lutz, Wolf, Garg, and Angeles do not disclose said user request further includes information relating to a demand for a network service quality, and further comprising a quality management server information output means which transmits information relating to the demand for the network service quality, to a quality management server which evaluates the network service quality.

However, Fijolek does disclose said user request further includes information relating to a demand for a network service quality, and further comprising a quality management server information output means which transmits information relating to the demand for the network service quality, to a quality management server which evaluates the network service quality (Figure 22; Col. 34, ln. 66-67; Col. 35, ln. 1-7).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lutz, Wolf, Garg, and Angeles by processing a request for network service quality through a quality of service server as taught by Fijolek in order to determine if enough bandwidth is available to provide a quality-of-service connection (Fijolek: Abstract, ln. 3-7).

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN P. WHIPPLE whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Fri (8:30 AM to 5:00 PM EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571-272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian P. Whipple

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7/18/10

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